

CLARK et al.
Appl. No. 10/576,095
Atty. Dkt. 620-432
Amendment
January 21, 2009

REMARKS

Reconsideration is requested.

Claims 1-7, 11-15 and 18 are pending.

The Examiner is requested to confirm consideration of U.S. Patent Nos.

6,855,706; 6,765,004 and 7,196,089 which were cited in an Information Disclosure Statement filed October 17, 2008. The Examiner returned an executed and partially initialed copy of the PTO 1449 Form listing these patents however the Examiner's initials are not included in the left hand column of the partially initialed Form next to these documents. Return of a completely initialed copy of the Form listing these patents as acknowledgement of their consideration is requested.

Claim 1 has been revised, without prejudice, to recite "hydrates" in place of the objected-to "solvates". Hydrates are described, for example, in paragraph [0163] of the U.S. Patent Office published version of the present application (i.e., US 2007-0135503 A1). The objection to claim 1 stated on page 4 of the Office Action dated October 31, 2008 is obviated by the above amendment. Withdrawal of the objection is requested.

Withdrawal of the provisional obviousness-type double patenting rejection of claims 1-7, 11-15 and 18 over claims 1-14 of the copending application no. 12/186,308, is requested in view of MPEP § 804, which states, as follows¹:

If "provisional" ODP rejections in two applications are the only rejections remaining in those applications, the examiner should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer. A terminal disclaimer must be required in the later-filed application before the ODP

¹ Obtained from www.uspto.gov (January 20, 2009) (emphasis added).

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rejection can be withdrawn and the application permitted to issue. If both applications are filed on the same day, the examiner should determine which application claims the base invention and which application claims the improvement (added limitations). The ODP rejection in the base application can be withdrawn without a terminal disclaimer, while the ODP rejection in the improvement application cannot be withdrawn without a terminal disclaimer.

As the obviousness-type double patenting rejection is the only remaining rejection, the Examiner is requested to withdraw same and forward a Notice of Allowance.

The Examiner is requested to contact the undersigned, preferably by telephone, in the event anything further is required.

Respectfully submitted,

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